

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

KEVEN STEBBINS,

Plaintiff,

-against-

CVS ALBANY, L.L.C.,
CVS HEALTH CORPORATION,
CVS PHARMACY, INC.,
CVS HEALTH SOLUTIONS LLC,
885 CENTRAL LLC, CVS ALBANY, LLC,
CVS PHARMACY #417, ABC CORP.,
XYZ, LLC, JOOHN DOES 1 THROUGH 10,
and JANE DOES 1 Through 10

1:24-cv-1047 (AMN/ML)

Defendants,

DEFENDANT’S NOTICE OF REMOVAL

PLEASE TAKE NOTICE, that defendants CVS ALBANY, L.L.C. (hereinafter “CVS”), by and through their attorneys, Wilson Elser Moskowitz, Edelman & Dicker, LLP, hereby removes this action from the Supreme Court of the State of New York, Albany County, to the United States District Court for the Northern District of New York, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, on the following grounds:

I. STATEMENT OF THE FACTS

1. This action was initially commenced with the filing of a Summons and Complaint on July 31, 2024, in the Supreme Court of the State of New York, Albany County, which was served on CVS on August 12, 2024. (**Exhibits “A” and “B”**). The Plaintiff brings this suit for purported negligence and malpractice, negligent hiring and negligent training and supervision

arising out of Plaintiff allegedly being provided an incorrect prescription, Xanax instead of Gabapentin, which sent Plaintiff on a tailspin. (*See generally* Verified Complaint, attached hereto as **Exhibit “A”**).

2. This Notice of Removal has been timely filed within thirty (30) days of receipt of Plaintiff’s Verified Complaint, which was served on August 12, 2024. (**Exhibit “B”**). *See* 28 U.S.C § 1446(b)(1).

II. PROCEDURAL REQUIREMENTS

3. CVS Albany, LLC is the only properly named Defendant in this action. Concurrent with the filing of this Notice or promptly thereafter, the Defendants will serve this Notice of Removal on Plaintiff and file a copy of this Notice of Removal, together with a notice of filing of same, with the Supreme Court of the State of New York, Albany County, pursuant to 28 U.S.C. § 1446(d).

4. Pursuant to 28 U.S.C. § 1446(a), copies of all state court documents served upon or provided to Defendant is attached as **Exhibit “A.”**

5. As of the date of this Notice of Removal, there have been no orders issued by the Supreme Court of the State of New York, Albany County, in relation to this matter, and no further state court proceedings in this litigation have taken place.

6. Removal to this venue is proper because the Supreme Court of the State of New York, Albany County, lies within the jurisdictional boundary of United States District Court for the Northern District of New York.

7. This is a civil action over which this Court has diversity jurisdiction pursuant to 28 U.S.C § 1332, which provides that a defendant may remove a state court proceeding to federal

court if: (1) the amount in controversy exceeds \$75,000.00, exclusive of interests and costs; and
(2) the action is between citizens of different states.

III. GROUND FOR REMOVAL

8. This Court has original jurisdiction over this matter pursuant to 28 U.S.C § 1332, as there is complete diversity between the parties and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

A. There is Complete Diversity Between the Parties

9. The Plaintiff is a citizen of the State of New York, as the Summons indicates that the basis of venue is the Plaintiff's residence in Albany County. (*See generally* Summons, attached hereto as **Exhibit "A"**).

10. The only correct entity named is CVS Albany, LLC, as it operates the facility that filed the prescription that is the subject of this cause of action. However, Plaintiff's Complaint incorrectly names additional CVS Defendants in the action, which are irrelevant and have nothing to do with the subject cause of action. Consequently, for purposes of Diversity, CVS Albany, LLC is the only party that should be considered.

11. CVS Albany is a single member LLC; its sole managing member is CVS Pharmacy, Inc., which is a corporation incorporated under the laws of the State of Rhode Island, with its principal place of business in Woonsocket, Rhode Island. Accordingly, the Defendants are citizens of Rhode Island for purposes of diversity jurisdiction.

12. Thus, this lawsuit is between citizens of different states, and there is complete diversity of citizenship between Plaintiff and CVS, pursuant to 28 U.S.C § 1332.

B. The Amount in Controversy Requirement is Satisfied

13. While Plaintiff's Complaint does not specifically state the amount being sought, Plaintiff claims that, as a result of CVS's alleged conduct, Plaintiff has been "damaged in a sum far exceeding the jurisdictional limits of all lower courts." (**Exhibit "A"** at ¶ 30).

14. Accordingly, although CVS denies that Plaintiff is entitled to recover any damages in this action, the amount in controversy claimed exceeds \$75,000.

IV. CONCLUSION

15. Having shown that this case is properly removable based on the foregoing, the Defendants provide notice pursuant to 28 U.S.C. § 1441 and 1446, that this action, currently pending in the Supreme Court of the State of New York, Albany County, is removed to the United States District Court for the Northern District of New York, and respectfully requests that this Court exercise jurisdiction over this case.

Respectfully submitted this 27th day of August, 2024.

**WILSON, ELSE, MOSKOWITZ,
EDELMA & DICKER, LLP**

By: *Kadeem Wolliaston*

Kadeem O. Wolliaston, Esq.

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cc: The Office of The Albany County Clerk

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